Levine Blaszak
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September 16, 2011

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Notice of *Ex Parte* Meetings

Re: *Ex Parte* Contact in Connect America Fund, WC Docket 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High Cost Universal Support, WC Docket No. 05-337; Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link-Up, WC Docket No. 03-109

Dear Ms. Dortch:

On behalf of the Ad Hoc Telecommunications Users Committee (Ad Hoc), Colleen L. Boothby and the undersigned, of Levine, Blaszak, Block & Boothby, LLP, and Susan M. Gately, of SMG Consulting LLC, met with the following members of the Wireline Competition Bureau on September 14, 2011: Sharon Gillett, Bureau Chief; Carol Mattey, Deputy Bureau Chief; Steve Rosenberg, Chief Data Officer; Gary Seigel; Rebekah Goodheart, Assistant Bureau Chief; Jerry Prime, Legal Counsel; Al Lewis, Pricing Division Chief; Eric Ralph, Chief Economist; Marcus Maher, Deputy Division Chief; and Victoria Goldberg, Attorney.

During this meeting we discussed the items set forth in the attached outline which was distributed to all meeting attendees.

Ad Hoc reiterated its support for the use of a price benchmark as both a USF offset and for imputation purposes in Intercarrier Compensation reform, Specifically, Ad Hoc restated its support for the use of a price benchmark of $15.62 from the FCC's Reference Book of Rates. We generally referenced material on this subject contained in Ad Hoc's August 24, 2011 Comments in response to the Further Inquiry on USF and ICC issues and have attached to this ex parte notice the relevant pages from that filing. In addition, we discussed that implementing an offset to ILEC USF receipts on a flash-cut basis (rather than a phased transition) would free up funds more quickly for broadband deployment initiatives.

We addressed certain questions raised by the staff about implementing reverse auctions in areas unlikely to attract multiple bidders. Ad Hoc explained that in areas where no bidders emerge, a technology neutral Forward Looking Economic Cost ("FLEC") model should be used by the Commission to determine subsidy amounts. Given the different cost characteristics of various technologies, the Commission may need to develop multiple FLEC models with inputs appropriate for specific technologies to determine the appropriate subsidy levels for each technology type deployed. We also emphasized that the ABC Plan's model was based on wireline technology costs.

Ms. Gately also explained that her review of the pricing data submitted by NECA in this docket did not reveal a pattern of information that could support any conclusions that were uniformly applicable to all NECA member carriers.

On September 15, 2011, Ms. Boothby and the undersigned also spoke separately via teleconference with Zac Katz, Chief Counsel and Senior Legal Advisor to the Chairman, regarding the issues set forth in the attached outline.

Pursuant to the Commission's rules, this letter has been filed in the above referenced dockets. If you have any questions regarding this submission, please contact me directly.

Sincerely,

Andrew M. Brown
Counsel, Ad Hoc Telecommunications Users Committee

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Attachments

Levine Blaszak Block & Boothby LLP

ATTACHMENT - OUTLINE
(Ex Parte Meeting on Universal Service and Intercarrier Compensation Reform, September 14 and 15, 2011)

Ad Hoc Telecommunications Users Committee Response to ABC Plan

Ad Hoc is a long-time participant in the Commission's efforts to reform the Universal Service Fund ("USF") and Intercarrier Compensation ("ICC") system and supports many of the proposals in the NPRM.

USF REFORM SHOULD FOCUS ON ALLOCATING THE RIGHT AMOUNT OF SUBSIDY TO THE RIGHT PROVIDER USING THE MOST COST EFFICIENT BROADBAND TECHNOLOGY.

- Competitive mechanisms, such as **reverse auctions**, offer the best method for identifying the provider that can deliver broadband in the most cost effective manner to the largest number of households in a service area.
  - Auction participation should be competitively neutral and technology agnostic.
  - One subsidy recipient per service area (*i.e*., one auction "winner"), and no subsidies to any provider in a service area that is already served by an unsubsidized provider.
- If multiple providers do not participate in a reverse auction, the FCC should use a **Forward Looking Economic Cost ("FLEC") Model** to determine the appropriate amount of subsidy a provider receives.
- Meaningful reform is impossible if incumbent providers are guaranteed a subsidy, regardless of need or efficiency, as the ABC Plan proposes:
  - Right of first refusal
  - Decade-long transition period
  - Outdated rates of return
  - No correction for unreasonably low retail rates (Ad Hoc supports proposals in the NPRM to impute reasonable local rates before sizing any USF subsidy or need for revenue neutrality)
  - Guaranteed subsidy payments that are never subject to periodic review or "re-bidding" as technology costs change

INTERCARRIER COMPENSATION REFORM CANNOT GUARANTEE "REVENUE NEUTRALITY."

- There is no statutory basis for adopting guaranteed carrier revenue streams, especially for carriers who claim to face competition.

- Rate increases to produce revenue neutrality must be just and reasonable, *i.e.,* based on cost recovery and economic efficiency

    - At a minimum, any "need" for revenue support must be based upon imputation of a local rate benchmark.

    - Requests for revenue support should be based on actual need, justified by a showing of auditable financial data.

THE FCC CAN ACHIEVE LONG-TERM USF/ICC REFORM BY ADDRESSING RURAL ISSUES ON A SEPARATE TRACK.

- Large "price-cap" carriers have no basis for asserting need for revenue guarantees, a concept that is inconsistent with incentive regulation.

- Large carriers will likely save money under ICC reform measures without revenue neutrality if the FCC immediately adopts rules to address traffic pumping.

- Small, rural carriers' revenue transition requirements can be addressed by the FCC on a longer time frame and separate from immediate reform measures adopted for large carriers.

EXCERPTS FROM AD HOC'S AUGUST 24, 2011 COMMENTS
(Discussed at September 14, 2011 Meeting
with Wireline Competition Bureau)

Before the
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In the Matter of

Connect America Fund	)	WC Docket 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
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Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

COMMENTS OF
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Users Committee

August 24, 2011

justifying eligibility for continued receipt of subsidies on the recipient of such subsidies who controls the data required for the Commission's analysis; it should not transfer that burden to non-subsidized competitors as proposed in the RLEC Plan.

V. EMBEDDED COST MODELS CREATE ECONOMIC DISTORTIONS THAT POORLY PROTECT CONSUMER INTERESTS AND INEFFICIENTLY ALLOCATE USF/CAF DISBURSEMENTS.

A. The Commission Should Reduce CAF Subsidies for Carriers that Provide Local Services at Rates Below a Specified Rate Benchmark.

The Public Notice requests comment on Ad Hoc's proposal in this proceeding that the Commission adopt a "low price offset" as part of "near-term" reforms to make some portion of the present HCF funds available for the new CAF.[37] Under Ad Hoc's proposal, the Commission would make a "low price offset" to a carrier's current USF disbursements if its local service prices fall below a relevant benchmark. The Public Notice requests comments on what the relevant benchmark rate might be, whether the benchmark should ratchet up over time, and whether the same benchmark should be used for ICC purposes.

As discussed in more detail in the Gately Declaration, the "benchmark" used to calculate the offset could reasonably fall anywhere between: (i) the weighted nationwide average monthly charge (including fees) found in the FCC's Reference Book of Rates ("RBR"); and (ii) the highest monthly charge (including fees) being charged by other ILECs in the state for comparable service reported in the RBR. Instead of increasing the benchmark over fixed periods of time, or increasing or decreasing the offset in response to changes a LEC may make to its local service rates following implementation of the offset plan, Ad Hoc proposes that the Commission base the

[37] Public Notice at 7; Ad Hoc Comments at 29–31.

calculation on the differential between: (i) the prices being charged by the local carriers today; and (ii) the benchmark. The differential will be carried forward for the five year period over which many of the other "Near Term Reforms" are being implemented and used to offset the CAF disbursements provided to the carrier.

The local service rate benchmark used for a "low price offset" should not be the same benchmark used for ICC purposes (nor for any revenue-based mechanism that might be implemented as part of the CAF distribution system). With the exception of this limited benchmark that has been proposed as a "near term" reform to free up CAF dollars, any other analysis of prices or revenues must include not only basic local service but the other (including non-regulated) services sold in conjunction with the access line or customer account being subsidized.

B. Review of Total Company Earnings is Unnecessary if the Commission Adopts the NPRM's Competitive Bidding Models for CAF Disbursements.

The Public Notice asks a number of questions related to review of carrier earnings.[38] The Commission's focus on the difficulties inherent in evaluating total company earnings in this context underscores, once again, the need for the Commission to move away from use of embedded costs or rate of return based distribution mechanisms for allocation of CAF funds and instead utilize a competitive bidding and/or FLEC based model for such disbursements.[39] Use of such an alternate funding mechanism will make the problem identified in the Public Notice far less serious

[38] Public Notice at 7-8.

[39] Ad Hoc has for many years supported the elimination of rate of return based regulation as it is used in the disbursement of HCF USF dollars and has, on prior occasions, cautioned the Commission against continuing discredited disbursement methodologies that encourage RLEC inefficiency. *See* Comments of the Ad Hoc Telecommunications Users Committee on the Petition for Rulemaking to Eliminate Rate-Of-Return Regulation of Incumbent Local Exchange Carriers by Western Wireless Corporation, CC Docket 96-45, RM-10822 (filed Jan. 16, 2004) at 9.

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Declaration

Of

Susan M. Gately

On Behalf of

AdHoc Telecommunications Users Committee

August 24, 2011

bottom line. Also not clear from the plan is how wireline ILECs, with no wireless spectrum and no satellites, would in fact utilize alternate technologies – unless they intend to act as intermediaries purchasing broadband connections from alternative technology providers that have been shut out of the $2.2-billion allocated for wireline carriers and keeping the difference in price.

25) More importantly, although the ABC Plan doesn't preclude carriers from using any portion of the $2.2-billion being set-aside for wireline carriers from using alternate technologies that may be more cost-effective, it denies those end users that ultimately pay the USF subsidies as surcharges on their telecommunications bills the benefits of those potentially lower-cost technologies. It also means that broadband deployment will not occur for as many customers as it would have if the funds were distributed based upon the most economically efficient technology choice – not a carrier-designed wireline-only cost model.

AD HOC'S PROPOSED "LOW PRICE OFFSET" SHOULD BE IMPLEMENTED AS PART OF THE "NEAR TERM REFORMS" DESIGNED TO MAKE CAF BROAFBAND FUNDS AVAILABLE

26) In its attempt to ensure that those high cost fund dollars flowing to carriers today are in fact necessary for the provision of universal service in conjunction with its desire to begin to make funds being used by the present HCF portion of the USF fund available to ensure greater broadband deployment through the new CAF the FCC proposed a number of "near-term" reforms in the NPRM. In conjunction with those proposals AdHoc suggested the FCC implement a "low price offset" to carriers' current USF disbursements for those carriers whose local service prices are below a relevant benchmark level thereby eliminating interstate

subsidization of low cost intrastate services. The Further Inquiry requests comments upon that proposal and what the relevant benchmark rate might be, whether the benchmark should ratchet up over time, and whether the same benchmark should be used for ICC purposes.

27) In setting the benchmark rate to be used as the "low price offset" the 96 Act's requirement that universal service be available at "affordable" and "reasonably comparable" prices is a useful guidepost. The theory behind the offset is that any ILEC that is receiving USF subsidies while at the same time charging less than the average price for the local service (either of its own choice because it is deregulated or as a result of some state regulatory constraint) by definition does not need its full USF subsidy because it could raise local rates to at least the average level paid by subscribers in the rest of the country. The Further Notice postulates using the "average" local service price (with fees) reported in the 2008 Reference Book of rates as a benchmark,[27] and AdHoc believes that average rate represents a perfectly valid benchmark.

28) The average rate of $15.62 ($21.36 with SLCs and fees) quoted in the Further notice is an average for residential flat rate service based upon a nationwide sample of 95 cities.[28] The 2008 Reference Book of Rates also contains an average residential measured service price of $8.49 ($17.29 with SLCs and fees) for those 79 sample cities where measured residential service is also available – the differential between the measured service average price and the measured service price offered by the low cost service provider would be

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[27] Public Notice at 7.

[28] Industry Analysis and Technology Division. Wireline Competition Bureau, *Reference Book of Rate, Prices Indicie, and Household Expenditures for Telephone Service,* at Table 1,1 (2008).

appropriate for the carriers offering measured service. Those incumbent LECs whose subscribers purchase service as part of a bundled service offering (including some combination of local, intra and interstate long distance, features and functions, internet access of anything else) would be required to report the disaggregated price for the local service portion of the offering. Although the incumbent local service providers in many jurisdictions have been deregulated[29] the vast majority still remain subject to some kind of tariffing requirement.

29) As an alternative (one also identified in AdHoc's initial comments) the Commission could also utilize the highest rate presently applicable (with fees) for comparable service in a given state. Even the highest rate paid by other local service customers in the same state is by definition both "affordable" (or customers would not be purchasing the service) and "reasonably comparable." If the FCC views the gathering of such state by state local service pricing as too onerous it could instead rely upon the individual sample city data found in the 2008 Reference Book. Table 1.3 in that document contains both flat and measured rate prices for sample cities in 42 of the 50 US states – the FCC could utilize the highest sample rate from each state in that document, leaving it with the task of gathering pricing information only for the 8 remaining states and US territories not included in the state-specific results.

[29] See AdHoc Comments in this proceeding filed April 18, 2011 at 29 and Appendix A, Declaration of Susan M. Gately at pp 8 – 10 and Exhibit 15.